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February 19, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, N.W.
Washington, DC 20554

RECEIVED

FEB 19 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Amendment of Section 73.202(b)
FM Table of Allotments
FM Broadcast Stations
(Coal Run, Kentucky and Clinchco, Virginia)**

Dear Ms. Dortch:

Transmitted herewith on behalf of East Kentucky Broadcasting Corp. is an original and four (4) copies of its Petition for Rulemaking seeking the commencement of a rulemaking proceeding to amend the FM table of allotments.

Should any questions arise concerning this matter, please contact this office.

Respectfully submitted,

Howard J. Barr

Enclosures

014
MB 04-20

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB 19 2004

In the Matter of

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Amendment of Section 73.202(b)

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Table of Allotments

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FM Broadcast Stations

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(Coal Run, Kentucky and

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Clinchco, Virginia)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. _____

RM No. _____

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

East Kentucky Broadcasting Corp. ("East Kentucky"), the licensee of WPKE-FM, Coal Run, Kentucky, by counsel and pursuant to Section 1.401 and Section 1.420 of the Commission's rules, hereby seeks the commencement of a rule making proceeding seeking an amendment of Section 73.202(b) of the Commission's rules. Specifically, East Kentucky seeks (a) the substitution of Channel 221C3 for Channel 276A at Coal Run, Kentucky, and a modification of the license of WPKE-FM to specify operation on Channel 221C3 and (b) the substitution of Channel 276A for Channel 221A at Clinchco, Virginia, and a modification of the license of WDIC-FM to specify operation on Channel 276A. The following is shown in support thereof:

1. The following changes are proposed to the FM Table of Allotments, Section 73.202(b) of the Commission's rules.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Clinchco, Virginia	221A	276A ¹
Coal Run, Kentucky	276A	221C3 ²

East Kentucky proposes to swap its current operating channel with another authorized facility, creating a mutually exclusive relationship as contemplated in Section 1.420(g)(3) of the Commission's rules. The attached Technical Exhibit demonstrates that each of the substitutions are mutually exclusive, qualifying the proposal for an upgrade without consideration of competing proposals.

In *Modification of FM Broadcasting Licenses to Higher Class Co-Channel or Adjacent Channels*, 60 RR 2d 114, 120 (1986), the Commission stated it would consider variations of the mutual exclusivity rule that would allow licensees to upgrade while protecting their interest in existing facilities. Since the proposed Channel 221C3 allotment at Coal Run, Kentucky is mutually exclusive with the existing Channel 221A allotment at Clinchco, Virginia, East Kentucky requests that this proposal be treated as an incompatible channel swap. *See Pikeville, Kentucky, Clinchco, Virginia and Matewan, West Virginia*, 6 FCC Rcd 3732, 3733 n. 6 (1991) (incompatible channel swap approved), *See also Holiday, Florida*, 7 FCC Rcd 2557 (1992).

A preclusion study is attached as Exhibit E-6 to the Technical Study demonstrating that only WPKE-FM's channel 276A will substitute at WDIC-FM's licensed site. Exhibit E-7 to the Technical Study demonstrates that no other Class C3 channel is available for WPKE-FM's use.

The proposed Channel 221C3 allocation and upgrade for WPKE-FM will provide a 60 dBu service of 4,803 square kilometers and a population of 154,333; representing a gain of 2,408

¹ The reference coordinates for Channel 276A at Clinchco, Virginia are 37° 08' 42" North Latitude, 82° 23' 22" West Longitude, the transmitter site of WDIC-FM. *See* Exhibit No. 1 (Technical Report of Charles M. Anderson)

² The proposed reference coordinates for Channel 221C3 at Coal Run, Kentucky are 37° 23' 57" North Latitude, 82° 23' 42" West Longitude, with a site restriction approximately 19.6 kilometers at 130.97 degrees. *See* Exhibit No. 1 (Technical Report of Charles M. Anderson)

square kilometers and 68,113 population.³ The area of loss is limited to 157 square kilometers and a population of 5,485.⁴ Exhibit E-5 to the Technical Exhibit demonstrates that at least six existing FM aural services will remain in the loss area subsequent to a grant of this proposal and would therefore continue to be well served.⁵ Accordingly, grant of this proposal is in the public interest.⁶

East Kentucky respectfully requests that the Commission issue an Order to Show Cause to the licensee of WDIC-FM to show cause why its authorization should not be modified as requested herein. East Kentucky agrees to reimburse the licensee of WDIC-FM for the reasonable and prudent out-of-pocket expenses incurred in effectuating the channel substitution.

East Kentucky hereby certifies that it has a present intention to apply for Channel 221C3 when allotted, and when authorized, to promptly construct the modification of its facility and commence operation on Channel 221C3.

WHEREFORE, in consideration of the foregoing, East Kentucky Broadcasting Corp. respectfully requests that Channel 221C3 be allotted to Coal Run, Kentucky, and the license of WPKE-FM, Coal Run, Kentucky be modified to specify operation on Channel 221C3, and that

³ See Technical Exhibit at Exhibit E-4.

⁴ *Id.*

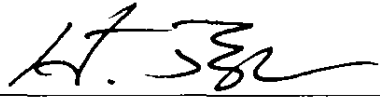
⁵ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev Bd 1983), *rev denied* FCC 83-559 (Nov 29, 1983). See also *La Grange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

⁶ See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Apopka, Maitland, and Homosassa Springs, Florida)*, DA 03-3555 (November 14, 2003) (upgrade from Class A to Class C3 in the public interest where proposal would produce a net gain of 2281.3 sq. km. And 169,414 persons).

Channel 276A be allotted to Clinchco, Virginia, and the license for WDIC-FM, Clinchco, Virginia be modified to specify operation on Channel 276A.

Respectfully submitted,

EAST KENTUCKY BROADCASTING CORP.

By: 

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Its Attorneys

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